

In the Matter of Merchant Mariner's Document No. Z-478099-D1 and
all other Licenses, certificates and Documents
Issued to: JOHN W. FORAN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

867

JOHN W. FORAN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 20 January 1955, an Examiner of the United States Coast Guard at Seattle, Washington, suspended Merchant Mariner's Document No. Z-478099-D1 issued to John W, Foran upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as a messman on board the American SS NORTH LIGHT under authority of the document above described, on or about 19 October 1953, while said vessel was at Inchon, Korea, he wrongfully created a disturbance while under the influence of intoxicating liquor; on or about 28, November 1953, while the ship was at Kunsan, Korea, he wrongfully created a disturbance while under the influence of intoxicating liquor; and on or about 29 November and 4, 5 and 6 December 1953, while the ship was in foreign ports, he wrongfully was absent from his ship and duties.

The hearing was conducted in absentia since Appellant was not present. The hearing proceeded as though the Examiner had entered a plea of "not guilty" to the charge and each specification proffered against Appellant.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of the Chief Steward of the NORTH LIGHT, the Official Logbook of the vessel and the Shipping Articles for the voyage in question.

At the conclusion of the hearing, the Examiner announced his decision and concluded that the charge and three specifications had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-478099-D1, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of six months.

Based upon my examination of the record submitted, I hereby

make the following

FINDINGS OF FACT

On a foreign voyage between the dates of 20 September and 28 December 1953, Appellant was serving as a messman on board the American SS NORTH LIGHT and acting under authority of his Merchant Mariner's Document No-Z-478099-D1.

While the ship was at Inchon, Korea, on 19 October 1953, Appellant created a disturbance while under the influence of intoxicating liquor. When the Master ordered Appellant to go to his room, he directed filthy language towards the Master.

On 28 and 29 November 1953, the ship was at Kunsan, Korea. On the former date, Appellant was drunk and disagreeable. He created a disturbance by addressing the Chief Steward with foul language and fighting on board the ship. Appellant was removed from the ship by the military police as a result of this disturbance. On 29 November, Appellant failed to perform his duties because he was wrongfully absent from the ship.

The ship was at Kure, Japan, on 4, 5 and 6 December 1953. On these dates, Appellant remained ashore without permission. Consequently, he did not perform his duties on the ship on these dates.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant admits that he committed acts of misconduct on the NORTH LIGHT but claims that this was due to provocation. Appellant has no prior record and submits letters with this appeal attesting to his good work, character and behavior. Appellant states that he failed to appear at the hearing because of his disgust with the shipboard life on the NORTH LIGHT. It is requested that the six months outright suspension be mitigated to a probationary suspension because the former is too severe for the offenses committed.

OPINION

Although the record does not show that a plea of "not guilty" was entered on behalf of Appellant in his absence, this did not prejudice Appellant's rights, in making his defense, because the hearing was conducted as though a plea of "not guilty" had been entered. Under such circumstances, it is implied that a person has waived that which would have been a mere formality. Garland v. State of Washington (1914) 232 U.S. 642.

Appellant's contentions on appeal are without merit. He intentionally did not perform any of his duties on four different dates. In this manner and otherwise, he repeatedly showed a complete lack of respect for the authority of the Master and of the Chief Steward who was in charge of the department to which Appellant was assigned. Such abuses of authority cannot be tolerated. It appears that Appellants conduct was just the type which would cause the conditions which he now claims existed on the NORTH LIGHT at the time of his offenses.

ORDER

The order of the Examiner dated at Seattle, Washington, on 20 January 1955 is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 15th day of March, 1956.

11010 TREASURY, USCGHQ, WASH., D.C.